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4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF WASHINGTON  
6 AT SEATTLE

7 MANE FALETOGO,

8 Plaintiff,

9 v.

10 CITY OF SEATTLE; and SEATTLE  
11 POLICE OFFICER JARED KELLER,

12 Defendants.

C19-247 TSZ

ORDER

13 THIS MATTER comes before the Court on defendant City of Seattle's motion to  
14 dismiss, docket no. 11. Having reviewed the briefs<sup>1</sup> filed in support of, and in opposition  
15 to, the motion, the Court enters the following order.

16 **Discussion**

17 Plaintiff Mane Faletoogo is the father of Iosia Faletoogo, who was shot by defendant  
18 Seattle Police Officer Jared Keller. See Compl. at ¶¶ 1 & 10 (docket no. 1). Plaintiff is  
19 not the personal representative of the Estate of Iosia Faletoogo, and he brings no claims on  
20 behalf of the Estate or any of its beneficiaries. See id. at ¶ 16. Plaintiff asserts solely a

21 <sup>1</sup> In response to City of Seattle's motion to dismiss, plaintiff's counsel filed a declaration, attached to  
22 which was 175 pages of materials. See Searle Decl. (docket no. 14). Plaintiff's attorneys did not timely  
23 provide courtesy copies of such documents as required by Local Civil Rule 10(e)(9), and the Court has  
not considered them in ruling on City of Seattle's Rule 12(b)(6) motion. See Fed. R. Civ. P. 12(d) ("If,  
on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded  
by the court, the motion must be treated as one for summary judgment under Rule 56.").

1 Fourteenth Amendment substantive due process claim pursuant to 42 U.S.C. § 1983, for  
2 deprivation of his liberty interest in the companionship and society of his son, against  
3 both Officer Keller and City of Seattle. *Id.* at ¶¶ 15-16.

4 City of Seattle has moved to dismiss any Fourth Amendment claim alleging  
5 excessive use of force on the ground that plaintiff lacks standing. Plaintiff, however, has  
6 not pleaded a Fourth Amendment claim, and City of Seattle’s motion to dismiss such  
7 claim is therefore STRICKEN as moot. With regard to plaintiff’s substantive due process  
8 claim under the Fourteenth Amendment, City of Seattle has moved to dismiss on the  
9 ground that plaintiff has not included within his complaint “sufficient factual matter” to  
10 “state a claim to relief that is plausible on its face,” *Ashcroft v. Iqbal*, 556 U.S. 662, 678  
11 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)), in light of the  
12 doctrines set forth in *Monell v. Dep’t of Soc. Servs. of N.Y.C.*, 436 U.S. 658 (1978), and  
13 its progeny. The Court agrees with City of Seattle.

14 Plaintiff has asserted merely that “[t]his claim also includes a cause of action for a  
15 pattern, practice, and failure of training on the part of the City of Seattle leading up to this  
16 wrongful death,” and that “[i]t is well documented that the City of Seattle has a pattern  
17 and practice of the use of excessive force.” Compl. at ¶ 16. The first statement indicates  
18 only what claim plaintiff brings, and the second sentence is conclusory. Plaintiff simply  
19 has not met the standards for pleading a plausible *Monell*-based substantive due process  
20 claim against City of Seattle. *See City of Canton v. Harris*, 489 U.S. 378, 388-92 (1989)  
21 (an alleged failure to train must reflect “deliberate indifference” to constitutional rights to  
22 yield municipal liability); *Monell*, 436 U.S. at 694 (a governmental entity is responsible  
23

1 under § 1983 when execution of its “policy or custom” by “those who edicts or acts may  
2 fairly be said to represent official policy” inflicts or is the “moving force” behind the  
3 constitutional violation). Plaintiff will be given an opportunity to cure the deficiencies of  
4 his complaint.

5 **Conclusion**

6 For the foregoing reasons, the Court ORDERS:

7 (1) Defendant City of Seattle’s Rule 12(b)(6) motion to dismiss, docket no. 11,  
8 is STRICKEN in part as moot and GRANTED in part. Plaintiff’s claim against City of  
9 Seattle is DISMISSED without prejudice and with leave to amend. This ruling does not  
10 affect plaintiff’s claim against defendant Seattle Police Officer Jared Keller.

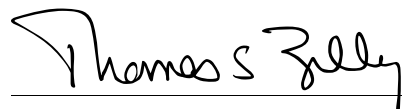
11 (2) Any amended complaint shall be electronically filed within twenty-one (21)  
12 days of the date of this Order. Such amended complaint may not alter the claim alleged  
13 against Officer Keller, who has already answered the original complaint, and who need  
14 not file any further responsive pleading or motion.

15 (3) The deadline for the parties to exchange initial disclosures pursuant to  
16 Federal Rule of Civil Procedure 26(a)(1) and to submit a Combined Joint Status Report  
17 and Discovery Plan is EXTENDED from April 29, 2019, to May 31, 2019.

18 (4) The Clerk is directed to send a copy of this Order to all counsel of record.

19 IT IS SO ORDERED.

20 Dated this 18th day of April, 2019.

21 

22 Thomas S. Zilly  
23 United States District Judge